

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOWAKI KOMATSU,

Plaintiff,

-against-

CITY OF NEW YORK; HECTOR ROSADO,
NYPD OFFICER, SHIELD #2225; EDWARD
PEI, NYPD OFFICER; NYPD OFFICER
O'BRIEN (SHIELD #: 10975); NEW YORK
METROPOLITAN TRANSIT AUTHORITY;
PHILIP E. FLOUMANSHAFT,

Defendants.

22-CV-0424 (LTS)

ORDER

LAURA TAYLOR SWAIN, United States District Judge:

Plaintiff, who is proceeding *pro se* and *in forma pauperis*, has brought many actions against the City of New York, members of the New York City Police Department, and city officials regarding his exclusion from public meetings. Nine of these actions were consolidated in *Komatsu v. The City of New York*, ECF 20-CV-07046 (ER) (S.D.N.Y.), and District Judge Edgardo Ramos imposed a prefiling injunction requiring Plaintiff to seek leave before filing such a new action and to limit the new complaint to 25 pages.

Plaintiff sought leave to bring a complaint asserting violations of his First and Fourth Amendment rights at a press conference in the subway station on July 25, 2017. Judge Ramos granted Plaintiff leave to do so “to the extent these topics fall outside the scope of this Court’s leave to file order,” *Komatsu*, 1:20-CV-07046, 289, and Plaintiff filed this action.

By order dated February 1, 2022, the Court held that Plaintiff’s 251-page complaint did not comply with Rule 8 of the Federal Rules of Civil Procedure because it was not a short and plain statement of his claim and further held that his claims arising on July 25, 2017, appeared to

be time-barred. The Court granted Plaintiff leave to file an amended complaint and directed him to include any facts warranting tolling of the limitations period.

Plaintiff's amended complaint totals 96 pages and does not mention his claims arising on July 25, 2017. Instead, he brings entirely new claims. Specifically, his new claims arise from the fact that on August 19, 2021, when he was en route to a public hearing in Brooklyn, New York, he was detained at the Union Square subway station for fare evasion. Plaintiff contends, among many other things, that his detention was a pretext intended to prevent him from testifying at the public hearing. (ECF 10 at 15-16, ¶ 8.)

The Court's February 2022 order granted Plaintiff leave to file an amended complaint regarding his July 25, 2017, claims, and Plaintiff's amended complaint is not responsive to the Court's order. The Court is authorized to dismiss claims going beyond the scope of the original lawsuit and the permitted amendment. *See, e.g. Palm Beach Strategic Income, LP v. Salzman*, 457 F. App'x 40, 43 (2d Cir. 2012) ("District courts in this Circuit have routinely dismissed claims in amended complaints where the court granted leave to amend for a limited purpose and the plaintiff filed an amended complaint exceeding the scope of the permission granted."); *Grimes v. Fremont General Corp.*, 933 F. Supp. 2d 584, 597 (S.D.N.Y. 2013) (citing cases); *Sullivan v. Stein*, 487 F. Supp. 2d 52 (D. Conn. 2007) (dismissing claims as "beyond the scope" of the Court's order).

Moreover, Plaintiff remains subject to a prefiling injunction, and he was granted leave to file an action regarding his July 25, 2017, claims. Plaintiff does indicate that he sought, or was granted, leave to bring an action arising from allegations that police officers detained him on August 19, 2021, to prevent him from testifying at a public hearing. For all of these reasons, the Court therefore directs the Clerk of Court to strike Plaintiff's amended complaint from this

action. Nothing in this order prevents Plaintiff from requesting leave, as set forth in *Komatsu*, 1:20-CV-07046, 45, to file a new complaint asserting his claims arising from the August 19, 2021 incident.

The Court grants Plaintiff a further opportunity to file an amended complaint, as explained in the February 2022 order to amend, that (1) makes a short and plain statement regarding his claims arising on July 25, 2017, and (2) shows cause why the claims should not be dismissed as time-barred. The amended complaint must be filed within 30 days of the date of this order. If Plaintiff does not file an amended complaint, or if the amended complaint does not plead facts showing that equitable tolling is warranted, the Court will dismiss the claims in Plaintiff's complaint as time-barred.

CONCLUSION

The Court directs the Clerk of Court to strike Plaintiff's amended complaint (ECF 10). The Court grants Plaintiff leave to file an amended complaint, within 30 days of the date of this order, that (1) makes a short and plain statement regarding his claims arising on July 25, 2017, and (2) shows cause why the claims should not be dismissed as time-barred. The amended complaint must be submitted to the Court's Pro Se Intake Unit and bear the same docket number as this order, 22-CV-0424 (LTS). For Plaintiff's convenience, an amended complaint form is attached to this order. If Plaintiff does not file an amended complaint, or if the amended complaint does not plead facts showing that equitable tolling is warranted, the Court will dismiss the claims in Plaintiff's complaint as time-barred.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: August 15, 2022
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

____ CV ____
(Include case number if one has been
assigned)

**SECOND AMENDED
COMPLAINT**

Do you want a jury trial?
☐ Yes ☐ No

Write the full name of each defendant. If you need more
space, please write "see attached" in the space above and
attach an additional sheet of paper with the full list of
names. The names listed above must be identical to those
contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- ☐ **Federal Question**
- ☐ **Diversity of Citizenship**

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

_____.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, _____, is a citizen of the State of
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or
subject of the foreign state of

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of
the State of _____

and has its principal place of business in the State of _____

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in _____.

If more than one defendant is named in the complaint, attach additional pages providing
information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional
pages if needed.

First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

_____		_____	
Dated		Plaintiff's Signature	

First Name	Middle Initial	Last Name	

Street Address			

County, City		State	Zip Code

Telephone Number		Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.



**United States District Court
Southern District of New York**

Pro Se (Nonprisoner) Consent to Receive Documents Electronically

Parties who are not represented by an attorney and are not currently incarcerated may choose to receive documents in their cases electronically (by e-mail) instead of by regular mail. Receiving documents by regular mail is still an option, but if you would rather receive them only electronically, you must do the following:

1. Sign up for a PACER login and password by contacting PACER¹ at www.pacer.uscourts.gov or 1-800-676-6856;
2. Complete and sign this form.

If you consent to receive documents electronically, you will receive a Notice of Electronic Filing by e-mail each time a document is filed in your case. After receiving the notice, you are permitted one “free look” at the document by clicking on the hyperlinked document number in the e-mail.² Once you click the hyperlink and access the document, you may not be able to access the document for free again. After 15 days, the hyperlink will no longer provide free access. Any time that the hyperlink is accessed after the first “free look” or the 15 days, you will be asked for a PACER login and may be charged to view the document. For this reason, *you should print or save the document during the “free look” to avoid future charges.*

IMPORTANT NOTICE

Under Rule 5 of the Federal Rules of Civil Procedure, Local Civil Rule 5.2, and the Court’s Electronic Case Filing Rules & Instructions, documents may be served by electronic means. If you register for electronic service:

1. You will no longer receive documents in the mail;
2. If you do not view and download your documents during your “free look” and within 15 days of when the court sends the e-mail notice, you will be charged for looking at the documents;
3. This service does *not* allow you to electronically file your documents;
4. It will be your duty to regularly review the docket sheet of the case.³

¹ Public Access to Court Electronic Records (PACER) (www.pacer.uscourts.gov) is an electronic public access service that allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts, and the PACER Case Locator over the internet.

² You must review the Court’s actual order, decree, or judgment and not rely on the description in the email notice alone. See ECF Rule 4.3

³ The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, using PACER or you can use one of the public access computers available in the Clerk’s Office at the Court.

CONSENT TO ELECTRONIC SERVICE

I hereby consent to receive electronic service of notices and documents in my case(s) listed below. I affirm that:

1. I have regular access to my e-mail account and to the internet and will check regularly for Notices of Electronic Filing;
2. I have established a PACER account;
3. I understand that electronic service is service under Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of the Local Civil Rules, and that I will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents;
4. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address, or if I wish to cancel this consent to electronic service;
5. I understand that I must regularly review the docket sheet of my case so that I do not miss a filing; and
6. I understand that this consent applies only to the cases listed below and that if I file additional cases in which I would like to receive electronic service of notices of documents, I must file consent forms for those cases.

Civil case(s) filed in the Southern District of New York:

Note: This consent will apply to all cases that you have filed in this court, so please list all of your pending and terminated cases. For each case, include the case name and docket number (for example, John Doe v. New City, 10-CV-01234).

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address

Date

Signature

Return completed form to:

Pro Se Intake Unit (Room 200)
500 Pearl Street
New York, NY 10007